

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**TIMOTHY KING, *et.al.*,**  
Plaintiffs,

Case No. 20-cv-13134  
**Hon. Linda V. Parker**

v.

**GRETCHEN WHITMER,** in her official capacity  
as Governor of the State of Michigan, *et.al.*,  
Defendants,

and

**ROBERT DAVIS,**  
Intervenor Defendant.

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**INTERVENOR DEFENDANT ROBERT DAVIS' EMERGENCY  
MOTION FOR THE COURT TO TAKE JUDICIAL NOTICE OF**

**INFORMATION CONTAINED IN NEWSPAPER ARTICLES  
PURSUANT TO FED.R.EVID. 201.**

NOW COMES, INTERVENOR DEFENDANT ROBERT DAVIS (hereinafter “Intervenor Defendant Davis”), by and through his attorney, ANDREW A. PATERSON, and for his Emergency Motion for the Court To Take Judicial Notice of Information Contained In Newspaper Articles Pursuant to Fed.R.Evid. 201, states the following:

**I. Concurrence**

Pursuant to Local Rule 7.1, prior to filing the instant motion, counsel for Intervenor Defendant Davis sought concurrence from Plaintiffs’ counsel, but concurrence was denied, necessitating the filing of this motion.

**II. Necessity for Immediate Consideration**

It is necessary for the Court to expedite the briefing and adjudication of the instant motion because currently pending before the Court is Plaintiffs’ emergency motion for temporary restraining order (ECF No. 7), which is based **solely** on the facts as pled and alleged in Plaintiffs’ amended complaint (ECF No. 6), including affidavits and expert reports filed in support. (See Plaintiffs’ Motion for TRO, ECF No.

7, PageID. 1832). The Court has granted expedited consideration of Plaintiffs' emergency motion for TRO. Thus, expedited consideration of Intervenor Defendant Davis' present motion is necessary before the Court's renders a decision on Plaintiffs' pending motion for TRO.

### **III. Law and Legal Analysis**

#### **A. The Court Should Take Judicial Notice of The December 4, 2020 Detroit Free Press Article That Refutes and Debunks Truthfulness of Affidavit Submitted In Support of Plaintiffs' Emergency Motion for TRO.**

Rule 201 of the Federal Rules of Evidence allows the court to take judicial notice of "adjudicative facts" which are "not subject to reasonable dispute" because they are "either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned." FED. R. EVID. 201(b). Rule 201(c) of the Federal Rules of Evidence further provides that the Court "must take judicial notice if a party requests it and the court is supplied with the necessary information." FED. R. EVID. 201(c). Moreover, "[t]he court may take judicial notice at any stage of the proceeding." FED. R. EVID. 201(d).

Here, Intervenor Defendant Davis is respectfully requesting the Court to take judicial notice of the December 4, 2020 newspaper article

published by the Detroit Free Press entitled: “Affidavit in Michigan lawsuit makes wildly inaccurate claims about voter turnout in state.”<sup>1</sup> A copy of the December 4, 2020 Detroit Free Press article is attached hereto as **Exhibit A**. It is well-settled that a federal court can take judicial notice of information contained in a newspaper article. See e.g. *Logan v. Denny's, Inc.*, 259 F. 3d 558, 578, n. 9 (6th Cir. 2001)(collecting cases); *U.S. ex rel. Dingle v. BioPort Corp.*, 270 F. Supp. 2d 968, 973 (W.D. Mich. 2003). The Court should take judicial notice of the aforementioned December 4, 2020 Detroit Free Press article because it refutes and debunks certain facts falsely attested to in the affidavit filed by Russell James Jr. (ECF No. 1-14 PageID. 625-630) and the Expert Report purportedly authored by Russel James Jr. (ECF No. 49-3, PageID. 3111-3142), which were filed by Plaintiffs’ counsel in support of Plaintiffs’ lawsuit and pending motion for TRO (ECF No. 7).

The December 4, 2020 Detroit Free Press article concludes that the information contained in Russel James Jr.’s affidavit (ECF No. 1-14) and Expert Report (49-3) was FALSE because the numbers and

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<sup>1</sup><https://www.freep.com/story/news/local/michigan/detroit/2020/12/04/michigan-lawsuit-makes-wild-claims-voter-turnout/3829654001/>

data cited in Russel James Jr.'s affidavit (ECF No. 1-14) and Expert Report (ECF No. 49-3) "do not match the official statement of votes cast in all but one jurisdiction, and many inflate the numbers significantly. The official data show that the number of voters who cast a ballot in November's election did not exceed the number of registered voters in any of the jurisdictions named." (**See Detroit Free Press Article Exhibit A**). The information contained and cited in Russel James Jr.'s affidavit (ECF No. 1-14) and Expert Report (ECF No. 49-3) was **so egregiously false that the Detroit Free Press rated his claim: "Pants on Fire!" (Exhibit A)**. It is important to note that submitting a false affidavit to the Court provides a sufficient basis for the Plaintiffs, Plaintiffs' counsel, and the affiant, Russel James Jr., to be subjected to sanction proceedings before this Honorable Court. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991) ("[W]hen there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court should ordinarily rely on the Rules rather than the inherent power. But if in the informed discretion of the court, neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power.").

In addition to the December 4, 2020 Detroit Free Press article, Intervenor Defendant Davis also requests the Court to take judicial notice of the December 1, 2020 article published by the Associated Press (AP) entitled: “Disputing Trump, Barr says no widespread election fraud.”<sup>2</sup> This article clearly underscores the fact that Plaintiffs’ instant lawsuit and emergency motion for TRO (ECF No. 7) are frivolous and meritless because the United States’ top law enforcement official, Attorney General William Barr, “declared Tuesday the U.S. Justice Department has uncovered no evidence of widespread voter fraud that could change the outcome of the 2020 election.” (**See December 1, 2020 AP Article attached as Exhibit B**). Again, as noted, a federal court can take judicial notice of information contained in a newspaper article. *See e.g. Logan v. Denny's, Inc.*, 259 F. 3d 558, 578, n. 9 (6th Cir. 2001)(collecting cases); *U.S. ex rel. Dingle v. BioPort Corp.*, 270 F. Supp. 2d 968, 973 (W.D. Mich. 2003). Like the Detroit Free Press article, the information contained in the AP article is reliable information that refutes Plaintiffs’ frivolous claims.

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<sup>2</sup><https://apnews.com/article/barr-no-widespread-election-fraud-b1f1488796c9a98c4b1a9061a6c7f49d>

## **CONCLUSION**

**WHEREFORE**, for the foregoing reasons, Intervenor Defendant Davis prays that this Honorable Court GRANT his emergency motion for the Court to take judicial notice of information contained in newspaper articles published in the Detroit Free Press and Associated Press.

**Dated: December 5, 2020**

Respectfully submitted,

/s/ ANDREW A. PATERSON  
ANDREW A. PATERSON (P18690)  
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Robert Davis  
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## **CERTIFICATE OF SERVICE**

I, ANDREW A. PATERSON, certify that forgoing document(s) was filed and served via the Court's electronic case filing and noticing system (ECF) this 5th day of December, 2020, which will automatically send notification of such filing to all attorneys and parties of record registered electronically.

Dated: December 5, 2020

Respectfully submitted,

/s/ ANDREW A. PATERSON  
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# Affidavit in Michigan lawsuit makes wildly inaccurate claims about voter turnout in state

Clara Hendrickson

Detroit Free Press

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*This is one in a series of fact checks the Detroit Free Press is doing on public issues in conjunction with PolitiFact, a nonprofit national news organization. Suggest a fact check [here](#).*



## The claim: In 10 Michigan precincts, voter turnout reached 100% and in 6 precincts it surpassed 100%

A lawsuit is asking a federal court in Michigan to force state leaders to disregard Michigan's certified election results and award its 16 Electoral College votes to President Donald Trump. It includes an affidavit that makes wildly inaccurate claims about voter turnout in Michigan cities and townships.

The affidavit comes from Russell James Ramsland Jr., a cybersecurity analyst and former Republican congressional candidate. Ramsland is the one who mistook voting jurisdictions in Minnesota for Michigan towns in a separate flawed analysis of voter turnout. His latest analysis correctly names Michigan voting jurisdictions, but similarly arrives at inaccurate voter turnout rates.



For instance, Ramsland claims that Detroit saw a turnout of 139.29%. The city's official results show that turnout in the city was actually 50.88% of registered voters.

When asked about the error in Ramsland's affidavit, Gregory Rohl, the attorney representing the plaintiffs in the federal lawsuit in Michigan, said he and his team would investigate the data. "I'm always willing to learn and surely want the facts set forth to be accurate in any filing bearing my name," Rohl wrote in an email to the Free Press.

Ramsland's analysis gained public attention when a witness shared its inaccurate findings during a state House Oversight Committee hearing in Lansing Wednesday. During the hearing, Rudy Giuliani, Trump's personal attorney, brought a number of witnesses to share allegations of election fraud and misconduct already discredited by election officials and in court. The witnesses included Col. Phil Waldron, who said he's part of a team that looked into "election manipulation." He claimed that "publicly available information" from Michigan analyzed in an affidavit shows excessive voter turnout that indicates election fraud. But the numbers do not square with the statement of votes cast from Michigan counties.

**More:**Trump allies to Michigan judge: Force Whitmer to overturn results, award state to president

**More:**Fiery Giuliani tells Michigan lawmakers election stolen, offers no credible evidence

A chart included in Ramsland's affidavit lists 21 Michigan cities and townships, five of which are alleged to have recorded a turnout above 90% in November's election, while 10 purportedly saw turnout of exactly 100% and six surpassed 100%.

Recinct/Township	% Turnout
City of North Muskegon	781.91%
Zeeland Charter Township	460.51%
Grout Township	215.21%
City of Muskegon	205.07%
City of Detroit	139.29%
Spring Lake Township	120.00%
Greenwood Township	100.00%
Hart Township	100.00%
Leavitt Township	100.00%
Newfield Township	100.00%
Otto Township	100.00%
Pentwater Township	100.00%
Shelby Township	100.00%
Shelby Township	100.00%
Weare Township	100.00%
City of Hart	100.00%
Grand Island Township	96.77%
Tallmadge Charter Township	95.24%
Fenton	93.33%
Boncmia Twp	90.63%
Zeeland Charter Township	90.59%

It is difficult to imagine that a turnout rate above 100% — let alone 782% in the City of North Muskegon or 461% in Zeeland Charter Township — would have escaped election officials compiling the statement of votes cast. But beyond the implausible turnout rates Ramsland alleges, there are other glaring problems with the list. Shelby Township is named twice. So is Zeeland Charter Township, with two vastly different turnout rates: 90.59% and 460.51%. Ramsland lists “Fenton” without specifying Fenton City or Fenton Township. But the turnout Ramsland lists for Fenton does not match the turnout in either jurisdiction.

The actual turnout statistics reveal the inaccuracy of Ramsland’s numbers. His figure for North Muskegon is off by a factor of 10: The actual number is 78.11%, not 781.91%. For Zeeland Charter Township, he inflated the turnout nearly sixfold. For Grout Township and the City of Muskegon, his number is more than triple the correct number.

There is one location where the actual turnout matches the turnout Ramsland lists: Grand Island Township, a tiny municipality split between an island in Lake Superior and a stretch of the Upper Peninsula’s mainland. Turnout there

was 96.77%, according to the official record, as 30 out of the township's 31 registered voters cast a ballot in November's election.

The 215.21% turnout rate Ramsland listed for Grout Township initially matched the data in the county's statement of votes cast, but that's because there was an error in the report. Gladwin County Clerk Laura Brandon-Maveal explained that the election results certified by the county are accurate, but that the number of registered voters used to compute the turnout rate was incorrect. "We have to hand punch in the total number of registered voters and they put in the wrong number of registered voters," Brandon-Maveal said. The county released a corrected report Dec. 3.

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In a second affidavit Ramsland filed in the same lawsuit Dec. 3, he said that the information source for his first affidavit was data from the state's open data portal and Secretary of State's election results page "that no longer exists."

The Secretary of State's office never shared township, city or precinct turnout data on its results page, according to Tracy Wimmer, a spokesperson for the office.

This latest affidavit includes a new list of precincts in another attempt to demonstrate excessive turnout. It shows that "Spring Lake Township, Precinct 6 — B" had a turnout of 120%. Spring Lake Township's clerk said that there's no such precinct. Spring Lake Township Precinct 6 had a turnout of 66.74% in November's election. The list also shows that one precinct in the City of South Haven had a 100% turnout rate. The city's clerk said that there are only eight voters in that precinct, all of whom voted.

Ramsland's new list also showed 33 voting jurisdictions with turnout between 86.79% and 96.77%. An initial review indicated many of these turnout rates are accurate. Michigan had record turnout statewide. President-elect Joe Biden carried the state by more than 154,000 votes.

## Our ruling

An affidavit filed in a lawsuit in Michigan seeking to overturn the election purports to show turnout rates in Michigan that indicate election fraud.

The numbers do not match the official statement of votes cast in all but one jurisdiction, and many inflate the numbers significantly. The official data show that the number of voters who cast a ballot in November's election did not exceed the number of registered voters in any of the jurisdictions named.

We rate this claim Pants on Fire!

*Louis Jacobson contributed to this report.*

*Clara Hendrickson fact-checks Michigan issues and politics as a corps member with Report for America, an initiative of The GroundTruth Project. Contact Clara at [chendrickson@freepress.com](mailto:chendrickson@freepress.com) or 313-296-5743 for comments or to suggest a fact-check.*

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## Disputing Trump, Barr says no widespread election fraud

By MICHAEL BALSAMO December 1, 2020



1 of 3

FILE - In this Oct. 15, 2020, file photo Attorney General William Barr speaks during a roundtable discussion on Operation Legend, a federal program to help cities combat violent crime in St. Louis. Attorney General William Barr said Tuesday, Dec. 1, that the Justice Department has not uncovered evidence of widespread voter fraud and has seen nothing that would change the outcome of the 2020 presidential election. (AP Photo/Jeff Roberson, File)

WASHINGTON (AP) — Disputing President Donald Trump’s persistent, baseless claims, Attorney General William Barr declared Tuesday the U.S. Justice Department has uncovered no evidence of widespread voter fraud that could change the outcome of the 2020 election.

Barr’s comments, in an interview with the The Associated Press, contradict the concerted effort by Trump, his boss, to subvert the results of last month’s

voting and block President-elect Joe Biden from taking his place in the White House.

Barr told the AP that U.S. attorneys and FBI agents have been working to follow up specific complaints and information they've received, but "to date, we have not seen fraud on a scale that could have effected a different outcome in the election."

The comments, which drew immediate criticism from Trump attorneys, were especially notable coming from Barr, who has been one of the president's most ardent allies. Before the election, he had [repeatedly raised the notion](#) that mail-in voting could be especially vulnerable to fraud during the coronavirus pandemic as Americans feared going to polls and instead chose to vote by mail.

More to Trump's liking, Barr revealed in the AP interview that in October [he had appointed U.S. Attorney John Durham as a special counsel](#), giving the prosecutor the authority to continue to investigate the origins of the Trump-Russia probe after Biden takes over and making it difficult to fire him. Biden hasn't said what he might do with the investigation, and his transition team didn't comment Tuesday.

Trump has long railed against the investigation into whether his 2016 campaign was coordinating with Russia, but he and Republican allies had hoped the results would be delivered before the 2020 election and would help sway voters. So far, there has been only one criminal case, a guilty plea from a former FBI lawyer to a single false statement charge.

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- [– Republicans call for resignation of Wisconsin election chair](#)
- [– Trump files lawsuit challenging Wisconsin election results](#)
- [– Wisconsin, Arizona certify Biden wins in presidential vote](#)

Under federal regulations, a special counsel can be fired only by the attorney general and for specific reasons such as misconduct, dereliction of duty or conflict of interest. An attorney general must document such reasons in writing.

Barr went to the White House Tuesday for a previously scheduled meeting that lasted about three hours.



Trump didn't directly comment on the attorney general's remarks on the election. But his personal attorney Rudy Giuliani and his political campaign issued a scathing statement claiming that, "with all due respect to the Attorney General, there hasn't been any semblance" of an investigation into the president's complaints.



Attorney General William Barr said Tuesday the Justice Department has not uncovered evidence of widespread voter fraud that would change the outcome of the 2020 presidential election. (Dec. 1)

Other [administration officials who have come out forcefully](#) against Trump's allegations of voter-fraud evidence have been fired. But it's not clear whether Barr might suffer the same fate. He maintains a lofty position with Trump, and despite their differences the two see eye-to-eye on quite a lot.

Still, Senate Democratic leader Chuck Schumer quipped: "I guess he's the next one to be fired."

Last month, Barr issued a directive to U.S. attorneys across the country allowing them to pursue any "substantial allegations" of [voting irregularities](#) before the 2020 presidential election was certified, despite no evidence at that time of widespread fraud.

That memorandum gave prosecutors the ability to go around longstanding Justice Department policy that normally would prohibit such overt actions before the election was certified. Soon after it was issued, the department's top elections crime official announced he would step aside from that position because of the memo.

The Trump campaign team led by Giuliani has been [alleging a widespread conspiracy](#) by Democrats to dump millions of illegal votes into the system with no evidence. They have filed multiple lawsuits in battleground states alleging that partisan poll watchers didn't have a clear enough view at polling sites in some locations and therefore something illegal must have happened. The claims have been repeatedly dismissed including by Republican judges who have ruled the suits lacked evidence.

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But local Republicans in some battleground states have followed Trump in making unsupported claims, [prompting grave concerns](#) over potential damage to American democracy.

Trump himself continues to rail against the election in tweets and in interviews though his own administration has said the [2020 election was the most secure ever](#). He recently allowed his administration to begin the transition over to Biden, but he still refuses to admit he lost.

The issues they've have pointed to are typical in every election: Problems with signatures, secrecy envelopes and postal marks on mail-in ballots, as well as the potential for a small number of ballots miscast or lost.

But they've gone further. Attorney Sidney Powell [has spun](#) fictional tales of election systems flipping votes, German servers storing U.S. voting information and election software created in Venezuela "at the direction of Hugo Chavez," – the late Venezuelan president who died in 2013. Powell has since been removed from the legal team after an interview she gave where she threatened to "blow up" Georgia with a "biblical" court filing.

Barr didn't name Powell specifically but said: "There's been one assertion that would be systemic fraud and that would be the claim that machines were programmed essentially to skew the election results. And the DHS and DOJ have looked into that, and so far, we haven't seen anything to substantiate that."

In the campaign statement, Giuliani claimed there was “ample evidence of illegal voting in at least six states, which they have not examined.”

**Full Coverage:** [Election 2020](#)

“We have many witnesses swearing under oath they saw crimes being committed in connection with voter fraud. As far as we know, not a single one has been interviewed by the DOJ. The Justice Department also hasn’t audited any voting machines or used their subpoena powers to determine the truth,” he said.

However, Barr said earlier that people were confusing the use of the federal criminal justice system with allegations that should be made in civil lawsuits. He said a remedy for many complaints would be a top-down audit by state or local officials, not the U.S. Justice Department.

“There’s a growing tendency to use the criminal justice system as sort of a default fix-all,” he said, but first there must be a basis to believe there is a crime to investigate.

“Most claims of fraud are very particularized to a particular set of circumstances or actors or conduct. ... And those have been run down; they are being run down,” Barr said. “Some have been broad and potentially cover a few thousand votes. They have been followed up on.”

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Associated Press Writers Lisa Mascaro and Eric Tucker contributed to this report.